

**ASSEMBLY BILL**

**No. 1533**

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**Introduced by Assembly Member Waldron**

January 21, 2014

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An act to amend Sections 12301.6 and 12305.86 of the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1533, as introduced, Waldron. In-home supportive services: criminal background checks.

Existing law provides for the county-administered In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons are provided with services in order to permit them to remain in their own homes and avoid institutionalization. Existing law authorizes services to be provided under the IHSS program either through the employment of individual providers, a contract between the county and an entity for the provision of services, the creation by the county of a public authority, or a contract between the county and a nonprofit consortium. Existing law requires a county, public authority, or nonprofit consortium, as applicable, to conduct an investigation of the qualifications and background of an IHSS provider applicant, including specified criminal background checks.

This bill would require, as part of those criminal background checks, the Department of Justice to request federal summary criminal history information from the Federal Bureau of Investigation, and to review the information returned from the Federal Bureau of Investigation and provide it to the county, public authority, or nonprofit consortium.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 12301.6 of the Welfare and Institutions Code is amended to read:

12301.6. (a) Notwithstanding Sections 12302 and 12302.1, a county board of supervisors may, at its option, elect to do either of the following:

(1) Contract with a nonprofit consortium to provide for the delivery of in-home supportive services.

(2) Establish, by ordinance, a public authority to provide for the delivery of in-home supportive services.

(b) (1) To the extent that a county elects to establish a public authority pursuant to paragraph (2) of subdivision (a), the enabling ordinance shall specify the membership of the governing body of the public authority, the qualifications for individual members, the manner of appointment, selection, or removal of members, how long they shall serve, and other matters as the board of supervisors deems necessary for the operation of the public authority.

(2) A public authority established pursuant to paragraph (2) of subdivision (a) shall be both of the following:

(A) An entity separate from the county, and shall be required to file the statement required by Section 53051 of the Government Code.

(B) A corporate public body, exercising public and essential governmental functions and that has all powers necessary or convenient to carry out the delivery of in-home supportive services, including the power to contract for services pursuant to Sections 12302 and 12302.1 and that makes or provides for direct payment to a provider chosen by the recipient for the purchase of services pursuant to Sections 12302 and 12302.2. Employees of the public authority shall not be employees of the county for any purpose.

(3) (A) As an alternative, the enabling ordinance may designate the board of supervisors as the governing body of the public authority.

(B) Any enabling ordinance that designates the board of supervisors as the governing body of the public authority shall also specify that no fewer than 50 percent of the membership of the advisory committee shall be individuals who are current or past users of personal assistance services paid for through public or private funds or recipients of services under this article.

1 (C) If the enabling ordinance designates the board of supervisors  
2 as the governing body of the public authority, it shall also require  
3 the appointment of an advisory committee of not more than 11  
4 individuals who shall be designated in accordance with  
5 subparagraph (B).

6 (D) Prior to making designations of committee members  
7 pursuant to subparagraph (C), or governing body members in  
8 accordance with paragraph (4), the board of supervisors shall solicit  
9 recommendations of qualified members of either the governing  
10 body of the public authority or of any advisory committee through  
11 a fair and open process that includes the provision of reasonable  
12 written notice to, and a reasonable response time by, members of  
13 the general public and interested persons and organizations.

14 (4) If the enabling ordinance does not designate the board of  
15 supervisors as the governing body of the public authority, the  
16 enabling ordinance shall require the membership of the governing  
17 body to meet the requirements of subparagraph (B) of paragraph  
18 (3).

19 (c) (1) Any public authority created pursuant to this section  
20 shall be deemed to be the employer of in-home supportive services  
21 personnel referred to recipients under paragraph (3) of subdivision  
22 (e) within the meaning of Chapter 10 (commencing with Section  
23 3500) of Division 4 of Title 1 of the Government Code. Recipients  
24 shall retain the right to hire, fire, and supervise the work of any  
25 in-home supportive services personnel providing services to them.

26 (2) (A) Any nonprofit consortium contracting with a county  
27 pursuant to this section shall be deemed to be the employer of  
28 in-home supportive services personnel referred to recipients  
29 pursuant to paragraph (3) of subdivision (e) for the purposes of  
30 collective bargaining over wages, hours, and other terms and  
31 conditions of employment.

32 (B) Recipients shall retain the right to hire, fire, and supervise  
33 the work of any in-home supportive services personnel providing  
34 services for them.

35 (d) A public authority established pursuant to this section or a  
36 nonprofit consortium contracting with a county pursuant to this  
37 section, when providing for the delivery of services under this  
38 article by contract in accordance with Sections 12302 and 12302.1  
39 or by direct payment to a provider chosen by a recipient in  
40 accordance with Sections 12302 and 12302.2, shall comply with

1 and be subject to, all statutory and regulatory provisions applicable  
2 to the respective delivery mode.

3 (e) Any nonprofit consortium contracting with a county pursuant  
4 to this section or any public authority established pursuant to this  
5 section shall provide for all of the following functions under this  
6 article, but shall not be limited to those functions:

7 (1) The provision of assistance to recipients in finding in-home  
8 supportive services personnel through the establishment of a  
9 registry.

10 (2) (A) (i) The investigation of the qualifications and  
11 background of potential personnel. ~~Upon the effective date of the~~  
12 ~~amendments to this section made during the 2009–10 Fourth~~  
13 ~~Extraordinary Session of the Legislature, the~~ *The investigation*  
14 *with respect to any provider in the registry or prospective registry*  
15 *applicant shall include criminal background checks requested by*  
16 *the nonprofit consortium or public authority and conducted by the*  
17 *Department of Justice pursuant to Section 15660, for those public*  
18 *authorities or nonprofit consortia using the agencies on the effective*  
19 *date of the amendments to this section made during the 2009–10*  
20 *Fourth Extraordinary Session of the Legislature. Criminal*  
21 *background checks shall be performed no later than July 1, 2010,*  
22 *for any provider who is already on the registry on the effective*  
23 *date of amendments to this section made during the 2009–10 Fourth*  
24 *Extraordinary Session of the Legislature, for whom a criminal*  
25 *background check pursuant to this section has not previously been*  
26 *provided, as a condition of the provider’s continued enrollment in*  
27 *the IHSS program. The Department of Justice shall also request*  
28 *federal summary criminal history information from the Federal*  
29 *Bureau of Investigation, and shall review the information returned*  
30 *from the Federal Bureau of Investigation and provide it to the*  
31 *public authority or nonprofit consortium. Criminal background*  
32 *checks shall be conducted at the provider’s expense.*

33 (ii) Upon notice from the Department of Justice notifying the  
34 public authority or nonprofit consortium that the prospective  
35 registry applicant has been convicted of a criminal offense specified  
36 in Section 12305.81, the public authority or nonprofit consortium  
37 shall deny the request to be placed on the registry for providing  
38 supportive services to any recipient of the In-Home Supportive  
39 Services program.

1 (iii) ~~Commencing 90 days after the effective date of the act that~~  
2 ~~adds Section 12305.87, and upon~~ Upon notice from the Department  
3 of Justice that an applicant who is subject to the provisions of that  
4 section has been convicted of, or incarcerated following conviction  
5 for, an offense described in subdivision (b) of ~~that section~~ Section  
6 12305.87, the public authority or nonprofit consortium shall deny  
7 the applicant's request to become a provider of supportive services  
8 to any recipient of in-home supportive services, subject to the  
9 individual waiver and exception processes described in that section.  
10 An applicant who is denied on the basis of Section 12305.87 shall  
11 be informed by the public authority or nonprofit consortium of the  
12 individual waiver and exception processes described in that section.

13 (B) (i) Notwithstanding any other law, the public authority or  
14 nonprofit consortium shall provide an individual with a copy of  
15 his or her state-level criminal offender record information search  
16 response as provided to the entity by the Department of Justice if  
17 the individual has been denied placement on the registry for  
18 providing supportive services to any recipient of the In-Home  
19 Supportive Services program based on this information. The copy  
20 of the state-level criminal offender record information search  
21 response shall be included with the individual's notice of denial.  
22 Along with the notice of denial, the public authority or public  
23 consortium shall also provide information in plain language on  
24 how an individual may contest the accuracy and completeness of,  
25 and refute any erroneous or inaccurate information in, his or her  
26 state-level criminal offender record information search response  
27 as provided by the Department of Justice as authorized by Section  
28 11126 of the Penal Code. The state-level criminal offender record  
29 information search response shall not be modified or altered from  
30 its form or content as provided by the Department of Justice.

31 (ii) The department shall develop a written appeal process for  
32 the current and prospective providers who are determined ineligible  
33 to receive payment for the provision of services in the In-Home  
34 Supportive Services program. Notwithstanding any other law, the  
35 public authority or nonprofit consortium shall provide the  
36 department with a copy of the state-level criminal offender record  
37 information search response as provided to the entity by the  
38 Department of Justice for any individual who has requested an  
39 appeal of a denial of placement on the registry for providing  
40 supportive services to any recipient of the In-Home Supportive

1 Services program based on clause (ii) or (iii) of subparagraph (A).  
2 The state-level criminal offender record information search  
3 response shall not be modified or altered from its form or content  
4 as provided by the Department of Justice and shall be provided to  
5 the address specified by the department in its written request.

6 (C) This paragraph shall not be construed to prohibit the  
7 Department of Justice from assessing a fee pursuant to Section  
8 11105 or 11123 of the Penal Code to cover the cost of furnishing  
9 summary criminal history information.

10 (D) As used in this section, “nonprofit consortium” means a  
11 nonprofit public benefit corporation that has all powers necessary  
12 to carry out the delivery of in-home supportive services under the  
13 delegated authority of a government entity.

14 (E) A nonprofit consortium or a public authority authorized to  
15 secure a criminal background check clearance pursuant to this  
16 section shall accept a clearance for an applicant described in clause  
17 (i) of subparagraph (A) who has been deemed eligible by another  
18 nonprofit consortium, public authority, or county with criminal  
19 background check authority pursuant to either Section 12305.86  
20 or this section, to receive payment for providing services pursuant  
21 to this article. Existence of a clearance shall be determined by  
22 verification through the case management, information, and  
23 payroll system, that another county, nonprofit consortium, or  
24 public authority with criminal background check authority pursuant  
25 to Section 12305.86 or this section has deemed the current or  
26 prospective provider to be eligible to receive payment for providing  
27 services pursuant to this article.

28 (3) Establishment of a referral system under which in-home  
29 supportive services personnel shall be referred to recipients.

30 (4) Providing for training for providers and recipients.

31 (5) (A) Performing any other functions related to the delivery  
32 of in-home supportive services.

33 (B) (i) Upon request of a recipient of in-home supportive  
34 services pursuant to this chapter, or a recipient of personal care  
35 services under the Medi-Cal program pursuant to Section 14132.95,  
36 a public authority or nonprofit consortium may provide a criminal  
37 background check on a nonregistry applicant or provider from the  
38 Department of Justice, in accordance with clause (i) of  
39 subparagraph (A) of paragraph (2) of subdivision (e). If the person  
40 who is the subject of the criminal background check is not hired

1 or is terminated because of the information contained in the  
2 criminal background report, the provisions of subparagraph (B)  
3 of paragraph (2) of subdivision (e) shall apply.

4 (ii) A recipient of in-home supportive services pursuant to this  
5 chapter or a recipient of personal care services under the Medi-Cal  
6 program may elect to employ an individual as their service provider  
7 notwithstanding the individual's record of previous criminal  
8 convictions, unless those convictions include any of the offenses  
9 specified in Section 12305.81.

10 (6) Ensuring that the requirements of the personal care option  
11 pursuant to Subchapter 19 (commencing with Section 1396) of  
12 Chapter 7 of Title 42 of the United States Code are met.

13 (f) (1) Any nonprofit consortium contracting with a county  
14 pursuant to this section or any public authority created pursuant  
15 to this section shall be deemed not to be the employer of in-home  
16 supportive services personnel referred to recipients under this  
17 section for purposes of liability due to the negligence or intentional  
18 torts of the in-home supportive services personnel.

19 (2) In no case shall a nonprofit consortium contracting with a  
20 county pursuant to this section or any public authority created  
21 pursuant to this section be held liable for action or omission of any  
22 in-home supportive services personnel whom the nonprofit  
23 consortium or public authority did not list on its registry or  
24 otherwise refer to a recipient.

25 (3) Counties and the state shall be immune from any liability  
26 resulting from their implementation of this section in the  
27 administration of the In-Home Supportive Services program. Any  
28 obligation of the public authority or consortium pursuant to this  
29 section, whether statutory, contractual, or otherwise, shall be the  
30 obligation solely of the public authority or nonprofit consortium,  
31 and shall not be the obligation of the county or state.

32 (g) Any nonprofit consortium contracting with a county pursuant  
33 to this section shall ensure that it has a governing body that  
34 complies with the requirements of subparagraph (B) of paragraph  
35 (3) of subdivision (b) or an advisory committee that complies with  
36 subparagraphs (B) and (C) of paragraph (3) of subdivision (b).

37 (h) Recipients of services under this section may elect to receive  
38 services from in-home supportive services personnel who are not  
39 referred to them by the public authority or nonprofit consortium.  
40 Those personnel shall be referred to the public authority or

1 nonprofit consortium for the purposes of wages, benefits, and other  
2 terms and conditions of employment.

3 (i) (1) Nothing in this section shall be construed to affect the  
4 state's responsibility with respect to the state payroll system,  
5 unemployment insurance, or workers' compensation and other  
6 provisions of Section 12302.2 for providers of in-home supportive  
7 services.

8 (2) The Controller shall make any deductions from the wages  
9 of in-home supportive services personnel, who are employees of  
10 a public authority pursuant to paragraph (1) of subdivision (c), that  
11 are agreed to by that public authority in collective bargaining with  
12 the designated representative of the in-home supportive services  
13 personnel pursuant to Chapter 10 (commencing with Section 3500)  
14 of Division 4 of Title 1 of the Government Code and transfer the  
15 deducted funds as directed in that agreement.

16 (3) Any county that elects to provide in-home supportive  
17 services pursuant to this section shall be responsible for any  
18 increased costs to the in-home supportive services case  
19 management, information, and payroll system attributable to  
20 that election. The department shall collaborate with any county  
21 that elects to provide in-home supportive services pursuant to this  
22 section prior to implementing the amount of financial obligation  
23 for which the county shall be responsible.

24 (j) To the extent permitted by federal law, personal care option  
25 funds, obtained pursuant to Subchapter 19 (commencing with  
26 Section 1396) of Chapter 7 of Title 42 of the United States Code,  
27 along with matching funds using the state and county sharing ratio  
28 established in subdivision (c) of Section 12306, or any other funds  
29 that are obtained pursuant to Subchapter 19 (commencing with  
30 Section 1396) of Chapter 7 of Title 42 of the United States Code,  
31 may be used to establish and operate an entity authorized by this  
32 section.

33 (k) Notwithstanding any other law, the county, in exercising its  
34 option to establish a public authority, shall not be subject to  
35 competitive bidding requirements. However, contracts entered into  
36 by either the county, a public authority, or a nonprofit consortium  
37 pursuant to this section shall be subject to competitive bidding as  
38 otherwise required by law.

39 (l) (1) The department may adopt regulations implementing  
40 this section as emergency regulations in accordance with Chapter



1 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
2 Title 2 of the Government Code. For the purposes of the  
3 Administrative Procedure Act, the adoption of the regulations shall  
4 be deemed an emergency and necessary for the immediate  
5 preservation of the public peace, health and safety, or general  
6 welfare. Notwithstanding Chapter 3.5 (commencing with Section  
7 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
8 these emergency regulations shall not be subject to the review and  
9 approval of the Office of Administrative Law.

10 (2) Notwithstanding subdivision (h) of Section 11346.1 and  
11 Section 11349.6 of the Government Code, the department shall  
12 transmit these regulations directly to the Secretary of State for  
13 filing. The regulations shall become effective immediately upon  
14 filing by the Secretary of State.

15 (3) Except as otherwise provided for by Section 10554, the  
16 Office of Administrative Law shall provide for the printing and  
17 publication of these regulations in the California Code of  
18 Regulations. Emergency regulations adopted pursuant to this  
19 subdivision shall remain in effect for no more than 180 days.

20 (m) (1) In the event that a county elects to form a nonprofit  
21 consortium or public authority pursuant to subdivision (a) before  
22 the State Department of Health Care Services has obtained all  
23 necessary federal approvals pursuant to paragraph (3) of  
24 subdivision (j) of Section 14132.95, all of the following shall apply:

25 (A) Subdivision (d) shall apply only to those matters that do  
26 not require federal approval.

27 (B) The second sentence of subdivision (h) shall not be  
28 operative.

29 (C) The nonprofit consortium or public authority shall not  
30 provide services other than those specified in paragraphs (1), (2),  
31 (3), (4), and (5) of subdivision (e).

32 (2) Paragraph (1) shall become inoperative when the State  
33 Department of Health Care Services has obtained all necessary  
34 federal approvals pursuant to paragraph (3) of subdivision (j) of  
35 Section 14132.95.

36 (n) (1) One year after the effective date of the first approval by  
37 the department granted to the first public authority, the Bureau of  
38 State Audits shall commission a study to review the performance  
39 of that public authority.

(2) The study shall be submitted to the Legislature and the Governor not later than two years after the effective date of the approval specified in subdivision (a). The study shall give special attention to the health and welfare of the recipients under the public authority, including the degree to which all required services have been delivered, out-of-home placement rates, prompt response to recipient complaints, and any other issue the director deems relevant.

(3) The report shall make recommendations to the Legislature and the Governor for any changes to this section that will further ensure the well-being of recipients and the most efficient delivery of required services.

~~(o) Commencing July 1, 1997, the~~ The department shall provide annual reports to the appropriate fiscal and policy committees of the Legislature on the efficacy of the implementation of this section, and shall include an assessment of the quality of care provided pursuant to this section.

(p) (1) Notwithstanding any other law, and except as provided in paragraph (2), the department shall, no later than January 1, 2009, implement subparagraphs (A) and (B) through an all-county letter from the director:

(A) Subparagraphs (A) and (B) of paragraph (2) of subdivision (e).

(B) Subparagraph (B) of paragraph (5) of subdivision (e).

(2) The department shall, no later than July 1, 2009, adopt regulations to implement subparagraphs (A) and (B) of paragraph (1).

(q) The amendments made to paragraphs (2) and (5) of subdivision (e) made by the act that added this subdivision during the 2007–08 Regular Session of the Legislature shall be implemented only to the extent that an appropriation is made in the annual Budget Act or other statute, except for the amendments that added subparagraph (D) of paragraph (2) of subdivision (e), which shall go into effect January 1, 2009.

SEC. 2. Section 12305.86 of the Welfare and Institutions Code is amended to read:

12305.86. (a) ~~Effective October 1, 2009, a~~ A county shall investigate the background of a person who seeks to become a supportive services provider and who is not listed on the registry of a public authority or nonprofit consortium pursuant to Section

1 12301.6. This investigation shall include criminal background  
2 checks conducted by the Department of Justice pursuant to Section  
3 15660, *and a review by the Department of Justice of federal*  
4 *summary criminal history information maintained by the Federal*  
5 *Bureau of Investigation, as described in clause (i) of subparagraph*  
6 *(A) of paragraph (2) of subdivision (e) of Section 12301.6.*

7 ~~(b) No later than July 1, 2010, the county shall complete a~~  
8 ~~criminal background check pursuant to subdivision (a) for a~~  
9 ~~provider who is providing in-home supportive services prior to~~  
10 ~~October 1, 2009, and who is not listed on a public authority or~~  
11 ~~nonprofit consortium registry, as a condition of the provider's~~  
12 ~~continued enrollment in the IHSS program. Criminal background~~  
13 ~~checks shall be conducted at the provider's expense.~~

14 (c) (1) Upon notice from the Department of Justice that a  
15 prospective or current provider has been convicted of a criminal  
16 offense specified in Section 12305.81, the county shall deny or  
17 terminate the applicant's request to become a provider of  
18 supportive services to any recipient of the In-Home Supportive  
19 Services program.

20 ~~(2) Commencing 90 days after the effective date of the act that~~  
21 ~~adds Section 12305.87, and upon~~ Upon notice from the Department  
22 of Justice that an applicant who is subject to the provisions of that  
23 section has been convicted of, or incarcerated following conviction  
24 for, an offense described in subdivision (b) of ~~that section~~ Section  
25 12305.87, the county shall deny the applicant's request to become  
26 a provider of supportive services to any recipient of in-home  
27 supportive services, subject to the individual waiver and exception  
28 processes described in that section. An applicant who is denied on  
29 the basis of Section 12305.87 shall be informed by the county of  
30 the individual waiver and exception processes described in that  
31 section.

32 (3) Notwithstanding any other law, the county shall provide an  
33 individual with a copy of his or her state-level criminal offender  
34 record information search response as provided to the county by  
35 the Department of Justice if the individual has been denied  
36 eligibility to provide supportive services to any recipient of the  
37 In-Home Supportive Services program based on this information.  
38 The copy of the state-level criminal offender record information  
39 search response shall be included with the individual's notice of  
40 denial. Along with the notice of denial, the county shall also

1 provide information in plain language on how an individual may  
2 contest the accuracy and completeness of, and refute any erroneous  
3 or inaccurate information in, his or her state-level criminal offender  
4 record information search response as provided by the Department  
5 of Justice as authorized by Section 11126 of the Penal Code. The  
6 state-level criminal offender record information search response  
7 shall not be modified or altered from its form or content as provided  
8 by the Department of Justice.

9 (4) The department shall develop a written appeal process for  
10 the current and prospective providers who are determined ineligible  
11 to receive payment for the provision of services under the In-Home  
12 Supportive Services program. Notwithstanding any other law, the  
13 county shall provide the department with a copy of the state-level  
14 criminal offender record information search response as provided  
15 to the county by the Department of Justice for any individual who  
16 has requested an appeal based upon a denial of eligibility to provide  
17 supportive services to any recipient of the In-Home Supportive  
18 Services program pursuant to Sections 12305.81 and 12305.87.  
19 The state-level criminal offender record information search  
20 response shall not be modified or altered from its form or content  
21 as provided by the Department of Justice.

22 (d) This section shall not be construed to prohibit the Department  
23 of Justice from assessing a fee pursuant to Section 11105 or 11123  
24 of the Penal Code to cover the cost of furnishing summary criminal  
25 history information.

26 (e) A county authorized to secure a criminal background check  
27 clearance pursuant to this section shall accept a clearance for an  
28 individual described in subdivision (a) or (b) who has been deemed  
29 eligible by another nonprofit consortium, public authority, or  
30 county with criminal background check authority pursuant to either  
31 Section 12301.6 or this section, to receive payment for providing  
32 services pursuant to this article. Existence of a clearance shall be  
33 determined by verification through the case management,  
34 information, and payrolling system, that another county, nonprofit  
35 consortium, or public authority with criminal background check  
36 authority pursuant to Section 12301.6 or this section has deemed  
37 the current or prospective provider to be eligible to receive payment  
38 for providing services pursuant to this article.

- 1 (f) The department shall seek federal financial participation, to
- 2 the extent possible, to cover any costs associated with this section.

O